IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4610 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

PATEL LAVJIBHAI FULABHAI

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI for Petitioners

MS DS PANDIT AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 05/07/2001

C.A.V. JUDGEMENT

1. Heard the learned counsel Mr.J.R.Nanavati for the petitioners and Ms.D.S.Pandit for the respondent.

2. By way of this petition under Article 227 of the Constitution, the petitioners have challenged the order dated 25.11.1987 passed in exercise of the powers under Section 211 of the Bombay Land Revenue Code, 1879 ('the B.L.R. Code' for short) by the Additional Chief Secretary, Revenue Department, Government of Gujarat, whereby the earlier order of the District Development Officer dated 18.3.1983 granting permission for non-agricultural use of the land is set aside.

3. The petitioners had applied under Section 65 of the Land Revenue Code for permission to convert to residential use their land admeasuring Acres 12-00 Gunthas in Survey No.140/1 paikee situated in mauje Navagam, Taluka Jetpur. A part of the land being within 100 ft. of a railway line, the petitioners had furnished written undertakings assuring that no construction will be put up within 100 ft. of the railway line. Initially, the permission was declined by an order dated 7.12.1982, inter alia, on the ground that a positive opinion of the railway authorities regarding the open public plot being reserved within 100 ft. of the railway line was not received. The petitioners again applied for permission reiterating the assurance that no construction will be put up within 100 ft. of the railway line as required by the rules of the railway authorities. Pursuant to such application dated 3.1.1983, the petitioners were informed by a letter dated 16.2.1983 that decision was taken to grant the permission subject to certain conditions, and the petitioners were required to make certain payments on receipt of which the order of permission would be made. Thereafter, upon the necessary payments having been made by the petitioners, the order dated 18.3.1983 granting permission under Section 65 of the Land Revenue Code for non-agricultural use of the land in question was issued with 16 conditions and two annexures containing further 18 and 28 conditions. A few of the important and relevant conditions stipulated that no construction will be allowed within 100 ft. of the railway line and along the road lines and that no-objection certificate of the railway authorities will be required for the construction. It was also stipulated that in case of violation of any of the conditions of the order, the permission shall be liable to be cancelled.

3.1 More than three years after the above-mentioned order granting permission, a show cause notice dated 30.5.1986 was issued calling upon the petitioners to explain as to why the said order should not be set aside mainly for the reasons that the requisite no-objection certificate of the railway authorities was not obtained

and furnished, the common plot was not provided in the middle of the land and that the District Development Officer had granted the permission despite the earlier rejection of the application without the authority of law. The petitioners submitted a detailed reply to the said show cause notice submitting that during the period of three years and four months that had elapsed, the land was already divided into plots, the plots were sold and the buyers of the plots had already put up constructions. They further submitted that the railway authorities had not replied in time and for almost a year the queries made by the District Development Officer, that no-objection certificate of the railway authorities was not necessary and that, in any case, the condition to keep open the land within 100 ft. of the railway line was imposed and observed. It was also submitted that the requisite area for the common plot was kept in five plots according to the department's instructions. It was also submitted that the District Development Officer had not granted the permission on the same application which was rejected earlier, but it was granted pursuant to a fresh application made by the petitioners.

3.2 Pursuant to the aforesaid show cause notice, after affording an opportunity of personal hearing wherein an advocate of the petitioners was heard, the impugned order, in exercise of the powers conferred under Section 211, was passed. It appears from the impugned order that the District Development Officer had written a letter dated 20.12.1982 to the manager of the concerned division of the railway calling for his opinion and indicating that in case of non-receipt of any opinion, it would be presumed that the railway authorities have nothing to say in the matter. The learned Assistant Government Pleader submitted that the railway authorities had replied the said letter and the reply was received in the office of the District Development Officer on 9.2.1983 wherein the railway authorities had raised certain objections about the lay-out plan and called for a revised plan. However, without and before such revised plan being submitted and a final opinion of the railway authorities being obtained, the District Development Officer had proceeded to communicate the decision to grant permission to the petitioners and actually granted the permission by the aforesaid order dated 18.3.1983 laying down the conditions mentioned hereinabove.

3.3 According to the impugned order, unless and until the properly revised lay-out plans and building plans which were required to be approved by the railway authorities were submitted, no plotting was possible and

the petitioners' plea that plots were already sold after plotting could not be accepted. Therefore, after granting time of 15 days to furnish details of subsequent sale of the plots and having not received such details, the impugned order setting aside the earlier order of permission was made on the grounds that the District Panchayat had not followed the prescribed procedure, the earlier order rejecting the application for permission was revised without reasonable reasons and that non-agricultural use of the land in question was impossible if the conditions of the order granting permission were to be complied.

4. An affidavit-in-reply on behalf of the respondents is filed by the Joint Secretary (Appeals), Revenue Department, himself to submit, inter alia, that the impugned order was made on the basis of a representation received on 13.10.1983, in the lawful exercise of powers under Section 211 and after affording an opportunity of being heard to the petitioners. It is further submitted that pursuant to an inspection carried out by the authorities it was found that the land in question was open land when it was inspected on 30.6.1987, that in case of permission for non-agricultural use of land near a railway line, prior consultation with the railway authorities was necessary and that there was no provision for granting conditional non-agricultural permission. Thus, the impugned order was sought to be defended mainly on the grounds that the requisite no-objection certificate of the railway authorities was not obtained and furnished and the granting of conditional permission was not legal. The learned Assistant Government Pleader relied upon the Resolution No.BKHP-1081-612-CO. dated 25.3.1981 of the Revenue Department of the State Government regarding permission for non-agricultural use in which Appendix-I is the prescribed form for making an application for permission and in that form Question No.9 is whether no-objection certificate is attached if the land was within 100 ft. of a railway line. The said Resolution is containing detailed guidelines and prescribing the procedure for processing the application for non-agricultural use. And, in paragraph 6 of the Resolution it is specifically prescribed that opinion of such departments, officers or local authorities would be required as are mentioned in Appendix-III to the Resolution. Appendix-III to the Resolution does not mention any of the railway authorities whose opinion was required before granting the permission. Besides the aforesaid Resolution, nothing else has been canvassed or pointed out on behalf of the respondents to suggest that

a no-objection certificate of the railway authorities was absolutely and legally necessary for granting the permission. In such circumstances, it is held that it was not legal and proper to set aside the order granting permission on the ground of the no-objection certificate of the railway authorities having not been obtained and furnished. Even otherwise, if there was any lapse, it was on the part of the District Development Officer who granted permission under Section 65 and there was no justification for making the third parties suffer after three years of operation of the order.

5. The learned counsel for the petitioners vehemently argued that the impugned order was not bona fide and the revision proceedings were hopelessly delayed and the Division Bench judgment of the Supreme Court in STATE OF GUJARAT v. PATEL RAGHAV NATHA (AIR 1969 SC 1297) was relied upon for the proposition that although no period of limitation was prescribed under Section 211, the power thereunder must be exercised within a reasonable time. Reading Sections 211 and 65, it is clear that the revisional powers have to be exercised within a few months. It was further submitted that sufficient care for ensuring that no construction would come up within 100 ft. of the railway line had been taken in the order granting the permission with further condition that the permission was liable to be cancelled if the conditions were not complied. As far as the legality of the imposition of condition while granting permission was concerned, it was submitted on behalf of the petitioners that it was the normal and almost universal practice of the Government itself to impose conditions while granting the permission for non-agricultural use of land. A view has been taken by this Court in ABDULKADAR JIVABHAI KAGDI v. THE STATE OF GUJARAT [1985 GLH (UJ) 36], albeit in a different context, that conditions could be imposed while granting N.A. permission.

6. In the facts and for the reasons discussed hereinabove, the impugned order dated 25.11.1997 is found and held to be unreasonable, arbitrary and belated beyond the reasonable time and, therefore, set aside. The petition is allowed and Rule is made absolute accordingly with no order as to costs.

Sd/-

[D.H.WAGHELA, J.]

(KMG Thilake)